

ORIGINALDecision No. 41765

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 DAVID BLACK and
 BERNARD BLACK
 for Certificate of Public Convenience
 and Necessity

Application No. 29223

Bohnett, Hill, Cottrell & Bohnett by
 L. D. Bohnett, for Applicants;
 J. E. Peckham, for Almaden Improvement
 Club; Mrs. R. M. Alameda, for Almaden
 Water Users' Association; Albert Athenour,
 for Almaden Union School Board; Ernest J.
 Kataschi, for Almaden Grange.

O P I N I O N

In this application David Black and Bernard Black, owners of a water system serving the village of Almaden and vicinity in Santa Clara County, ask this Commission to issue its order granting them a certificate that public convenience and necessity require them to operate as a public utility serving water in the area identified on Exhibit A attached to the application. This area may be described in approximate terms as a strip of land ranging from one to two miles in width extending from Almaden Reservoir Dam on the south to Branham Lane on the north, a distance of about eight miles, along and on both sides of Alamos Road and Almaden Road. The application states that the only water at present available to householders within this territory, except for a few wells, is currently supplied by applicants. The application does not contain any schedule of rates proposed to be charged for water service.

A public hearing was held on this application in Almaden before Commissioner Huls.

The water properties owned and operated by applicants consist of an underground intake with chlorinator on Alamitos Creek at a point called Lovely Glen, located about a mile southwest or upstream from Almaden Reservoir Dam, and, according to an appraisal submitted by applicant, an aggregate of about four miles of pipe ranging from two inches to eight inches in diameter between the intake and the intersection of Almaden Road and Bertram Avenue. Applicants indicate they are currently supplying about 75 customers in Almaden Village. The remainder of the area for which a certificate is sought is served, according to the applicants' appraisal, by about ten miles of pipe ranging from two inches to six inches in diameter, owned by the County of Santa Clara. Testimony indicates about 65 customers at present served from this line. This latter line, referred to as the "County line," was installed by the County for use in connection with road maintenance and originally took water from the creek north or downstream of the village of Almaden. The oldest pipe on both systems was installed in 1902.

Applicants contend that they have been serving water through their own system since 1927 without making any charges for water; and that their predecessor had done likewise since inception of service in 1902. They have also more recently been furnishing free water, by means of the so-called County line, to water users along that line. Up until about a year ago, applicants' water supplemented the supply pumped into the County line from the creek at the junction of Almaden Road and Bertram Avenue, but a typhoid epidemic occurred in the summer of 1947, whereupon the Board of Health posted the creek below the village of Almaden as polluted; since that time applicants' water has constituted the exclusive supply to the County line. It is alleged by applicants that the deeds to property sold by them and their predecessor provide only for the laying of pipe lines for the service of water, making no mention of charges.

Initial use of the County line for domestic purposes was made by individuals tapping directly into the line, relying upon the County of Santa Clara to keep the line in operating condition. The Almaden Water Users' Association, a voluntary association of individuals receiving water from the County line, subsequently was organized for the purpose of maintaining this line, and for that purpose has made monthly flat charges on an allegedly non-profit basis.

The County no longer uses its line for its own purposes. Applicants allege that Mr. J. McKennon of the Board of Supervisors of the County of Santa Clara indicated the County's willingness to deed its line to a properly authorized party for a nominal amount. Applicants lay claim to the County line on the basis of a contract between the County of Santa Clara and applicants' predecessor. Applicants state that when they acquired their water properties in 1927 they caused notice to be served upon the then-existing water users along the County line to desist from maintaining their connections to the line without permission from applicants.

There were numerous complaints registered at the hearing concerning the quality of the water and the continuity of service. Applicants contend that at no time has the Board of Health found their water to be injurious to health, and maintains that the typhoid epidemic of the summer of 1947 was limited to users of water from the County line, the latter at the time relying on the water from the creek at the bottom of Almaden Village for at least a portion of its supply. Applicants further maintain that interruptions to service in recent periods have been limited to necessary repairs to pipe lines. However, complainants state that even since the time that applicants' water has constituted the sole source of supply to the County line, the water has been materially discolored and has contained much sediment on numerous occasions.

It was contended by witnesses that, with applicants' water as the exclusive source of supply, there has been an insufficiency of water to meet requirements along the County line. Responding to questions relative to the adequacy of water supply, applicants indicated that they were assured by an engineer about two years ago that the water supply was capable of supplying a larger territory than then served. Further, as indicative of the extent of water supply, they referred to a report by H. L. Maehl, dated December 5, 1923, setting a value of \$80,000 on the water rights then held by applicants' predecessor, and also to a later report by F. H. Tibbetts, dated February 18, 1929, valuing the water rights at from \$90,000 to \$100,000. Applicants do not indicate any alternate source of water as available if Alamitos Creek should dry up during extreme drought conditions, which are alleged to have been approached in 1928 or 1929, and state they do not propose to acquire any additional water rights.

Testimony indicates that applicants' source of water supply at Lovely Glen on Alamitos Creek is located just downstream of a picnic ground, and that further upstream is located the summer resort of Twin Creeks, together with about 20 summer cabins and a swimming pool, all potentially discharging sewage through septic tanks and other waste water into the source of water supply stream. However, it was not established that applicants' water at any time has been found by test to be injurious to health.

San Jose Water Works has recently extended its distribution system about one mile into the area for which certificate is sought herein, south from Branham Lane to Koozer Road. A letter from San Jose Water Works addressed to Mrs. R. M. Alameda, Secretary-Treasurer of the Almaden Water Users' Association, dated May 25, 1948, indicates that water company's willingness to serve water along the County line if given permission by the Board of Supervisors to use that line.

Representatives of the Almaden Water Users' Association and the Almaden Grange testified that members of their organizations were unanimously opposed to the granting of the certificate sought by applicants. It was testified that petitions to be presented to the Board of Supervisors have been circulated both in Almaden Village and along the County line advocating the service of water in these two areas by San Jose Water Works instead of by applicants. Further, it was stated that in the former area about 65 signatures have been secured from persons in that area, excluding persons owning property in the village but not locally available for signing at the time, and that in the latter area 135 names have been signed to the petition. No statements or representations were made by or for any customers in favor of applicants.

It would appear that applicants' water service rendered in the past has been such that they are without the support and confidence of the people in the area for which the certificate is sought. Although applicants state that if charges were made for water they then would be in a position to make improvements and render better service, no specific improvements were agreed to which would materially improve service. Further, no specific rates for water service were presented by applicants for consideration in connection with their request for a certificate.

The record in this proceeding does not provide a basis for granting the certificate. Accordingly, the application must be denied.

O R D E R

Application as entitled above having been filed with the Commission, a public hearing having been held thereon, the matter having been submitted and the Commission now being fully informed in the premises,

IT IS HEREBY ORDERED that this application be and it is hereby denied.

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The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Public Utilities Commission of the State of California.

The effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 22nd day of June, 1948.

R. F. Innes
James J. Cooney
Frank H. Smith
Harold P. Hill
Samuel P. Potter
Commissioners.